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together

New IRS Guidance Affecting 403(b) Plans:
*Your 403(b) Plan and the
IRS's Plan Document Program*

Webinar 2 of 2

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Pre-Approved Plan Program

- Revenue Procedure 2013-22
- Applies to prototype and volume submitter plans
 - Prototype: Base plan document plus adoption agreement
 - *Standardized*
 - *Non-standardized*
 - Volume submitter: Model plan document to which employer may make minor revisions
 - Volume submitter gives a greater degree of flexibility than a prototype but not so much that an employer may customize the document to meet its unique needs

Pre-Approved Plan Program

- Assurance to plan sponsors and vendors that plan document is approved by the IRS
 - No determination letter program established
 - *IRS change of position*
- Requires employer to adopt pre-approved plan for assurance from IRS
 - Exception for public schools that have adopted model plan language of Revenue Procedure 2007-71

Pre-Approved Plan Program

- Expanded the definition of which organizations are eligible to sponsor pre-approved plans to include pre-approved 403(b)(9) plans sponsored by churches and similar church-related organizations

Pre-Approved Plan Program

- Extended Remedial Amendment Program
 - Revenue Procedure 2009-89: Employer that adopted a written plan by December 31, 2009 and subsequently adopts a pre-approved plan will not experience a plan document failure
 - *Requires that plan sponsor adopt pre-approved plan before the last day of the remedial amendment period*
- Individually-designed plans may also use remedial amendment period
- Remedial Amendment Period – TBD

Standardized Plan

- If the plan is administered in accordance with its terms, it will meet the Internal Revenue Code's nondiscrimination requirements, and no testing will be required.

Standardized Plan

- Required Provisions

- Generally, all employees of an employer's controlled group must be covered by the plan.
- Employer contributions must meet one of the Treasury Regulations' design-based safe harbors, such as the same contribution percentage applies to all participants.
- All compensation, including taxable fringe benefits, must be included in compensation that is used to determine a participant's employer contribution.

Non-Standardized Plan

- Does not meet the drafting requirements set forth above.
- The trade-off for flexibility is that the plan will need to be monitored and tested for compliance with nondiscrimination requirements.
 - Governmental and church plans do not have to comply with the nondiscrimination requirements.

Volume Submitter Plan

- Rely on the IRS's Advisory Letter except for those provisions that you might have modified.
 - Should not be a problem if changes are minor and immaterial.
- Monitoring plan administration for compliance with nondiscrimination rules will be required.
 - Testing to the extent necessary.

Pre-Approved Plan Program

- Required Plan Provisions
 - Underlying investment arrangements must be incorporated by reference
 - Plan's terms control in event of conflict with terms of investment arrangement
 - *If an adopting employer intends to adopt a pre-approved plan and rely upon the IRS Advisory Letter, it will need to review its investment contracts with its vendors to ensure that they comply with this requirement, and to the extent they do not, renegotiate the contracts to remove the offending language*

Pre-Approved Plan Program

- Vesting provision
 - Separate non-403(b) annuity and/or custodial account until vested
- Appendix must list information of all participating vendors
 - May change information without affecting IRS's pre-approval

What to Do with Individually Designed Plans?

- If an organization's plan terms are relatively simple, it may make sense to consider a prototype or volume submitter plan document
- If the plan terms are more complicated, the organization may require an individually-designed plan document
 - Because there is no favorable determination letter program for 403(b) plans, the plan sponsor will need to rely on counsel to ensure the plan's terms meet applicable legal requirements

What to Do with Individually Designed Plans?

- Sample provisions issued by the IRS provide some indication of IRS expectations
 - Package includes sample definitions as well as provisions regarding plan administration, eligibility and participation, contributions, limitations on annual additions, distributions, hardship, plan loans, rollover contributions and transfers, investments, and plan terminations and amendments
- Must carefully track the sample plan provisions (other than those that are unique to the employer's plan) to avoid a compliance problem and avail the plan of the remedial amendment period protection



QUESTIONS?

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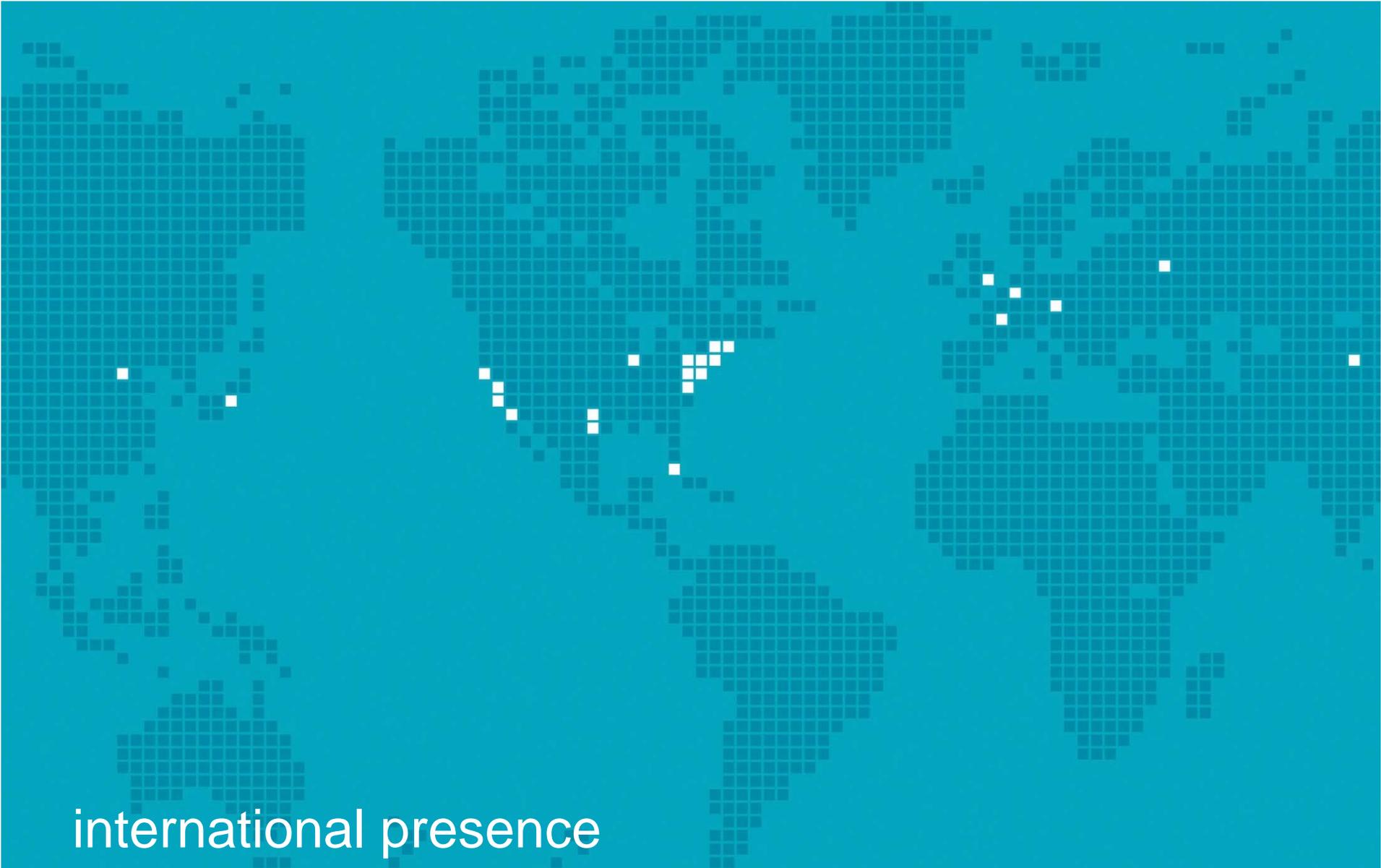
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